Cherry Hill Textiles, Inc. *and* International Ladies' Garment Workers' Union, AFL–CIO. Cases 29–CA–15033, 29–CA–15346, and 29–CA–15399

December 16, 1992

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

On March 25, 1992, Administrative Law Judge James F. Morton issued the attached decision. The Respondent filed exceptions and a supporting brief; the General Counsel filed cross-exceptions, an answering brief, and a brief supporting the judge's decision; and the Charging Party filed a posthearing brief and a brief opposing the Respondent's exceptions. The Respondent also filed a letter responding to the General Counsel's cross-exceptions, and the General Counsel filed a reply letter.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,[1] findings,[2] and conclusions and to adopt the recommended Order as modified.[3]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Cherry Hill Textiles, Inc., Brooklyn, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(b).

''(b) Laying off or discharging any employee for presenting himself at a Board hearing or in order to discourage employees from joining or supporting the International Garment Workers Union, AFL–CIO (ILGWU).''

2. Substitute the following for paragraph 2(a).

''(a) Offer Nidio Delgadillo and Wilson Montufar immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.''

3. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT offer a bribe to any employee as an inducement not to testify against us in a Board proceeding.

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[1] We find no merit in the Respondent's contention that the judge erred in overruling an objection to the qualification of the interpreter who provided Spanish-to-English translation during the first 2 days of hearing. The interpreter, who is proficient in Spanish and English, has performed free-lance interpretation and translation services for a year, and also has experience in translating Board affidavits and interpreting at Board elections. Although the Respondent challenges his competence in its exception, it cites no specific inaccuracies in the translation.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility findings unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings. We find that the judge implicitly credited employee Montufar over the Respondent's witnesses both with respect to the events precipitating his discharge and comments that he reported Supervisor Steven Crook to have made to employees on November 19, 1990, the day before the representation election in Case 29–RC–7491. In the latter conversation, Crook threatened employees with less work and with layoffs if the Union were successful and promised employees more work and a continued availability of employee loans if employees voted against the Union and for the incumbent union, Production Local 17-18.

The Respondent has excepted to the judge's finding that Arnold Bruckner is the Respondent's plant manager. It is undisputed that Bruckner has hired several employees and assigned an employee to work with discriminatee Montufar. Bruckner also received a salary, rather than hourly pay; was paid three times higher wages than hourly employees; and, unlike production employees, had an office. We find that Bruckner is a supervisor as defined in Sec. 2(11) of the Act.

[3] The General Counsel has excepted to: (1) an inadvertent reference by the judge to the wrong case number in citing an amendment to the complaint in Case 29–CA–15033; (2) omission from the judge's order of appropriate cease-and-desist and affirmative relief provisions corresponding to the violations of Sec. 8(a)(4); and (3) a typographical error in the judge's notice. We find merit in these exceptions and modify the Order and notice appropriately.

WE WILL NOT lay off or discharge any employee in order to discourage employees from joining or supporting the International Ladies' Garment Workers' Union, AFL–CIO (ILGWU).

WE WILL NOT promise benefits to employees, or threaten them with less work, layoffs, or discharge in order to discourage support for the ILGWU.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL offer Nidio Delgadillo and Wilson Montufar immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for their lost earnings, with interest.

CHERRY HILL TEXTILES, INC.

Rhonda Schechtman, Esq., for the General Counsel.
Chuck Ellman (BRH & E Associates), of South Orange, New Jersey, for Cherry Hill Textiles, Inc.
Brent Garren, Esq., of New York City, New York, for International Ladies' Garment Workers' Union, AFL–CIO

DECISION

STATEMENT OF THE CASE

JAMES F. MORTON, Administrative Law Judge. The complaints in these three cases, and in which the underlying unfair labor practice charges had been filed by the International Ladies' Garment Workers' Union, AFL–CIO (ILGWU), were consolidated for hearing. Therein the General Counsel alleges that Cherry Hill Textiles, Inc. (the Respondent) has engaged in unfair labor practices within the meaning of Section 8(a)(1), (3), and (4) of the National Labor Relations Act (the Act). The issues[1] *raised* by the pleadings are:

1. Whether Nidio Delgadillo was laid off on about July 17, 1990, because he supported the ILGWU and because he attended a Board hearing in its behalf or whether, as the Respondent asserts, he was laid off at his own request when work got slow.

2. Whether Delgadillo, upon his resuming work for the Respondent in October 1990 was discharged then because he testified in a Board proceeding on behalf of the ILGWU and otherwise supported it or whether he was discharged for insubordination.

3. Whether the Respondent, by its supervisor, Moishe Rubashkin, had, on about October 8, 1991, offered Delgadillo money and other items of value to induce him not to testify in the instant case.

4. Whether the Respondent discharged Wilson Montufar to discourage support for the ILGWU.

5. Whether the Respondent, by alleged Supervisors Steven Crook and Arnold Bruckner, threatened its employees with loss of employment and with other reprisals in order to discourage support for the ILGWU.

6. Whether alleged Supervisor Crook promised benefits to employees to discourage support for the ILGWU.

The hearing was held on various days from June 19, 1991, to its close on November 22, 1991. On the entire record,[2] including my observation of the demeanor of the witnesses and after considering the briefs filed by the parties, I make the following

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION

The Respondent is a New York corporation which is engaged in the business of dyeing and finishing textiles. In its operations annually, it meets the Board's nonretail standard for the assertion of jurisdiction.

The ILGWU is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

The Respondent has about 75 employees who have been represented by United Production Workers' Union, Local 17–18 (Local 17–18). As discussed below, the ILGWU began an organizational effort in the early part of 1990 to unseat Local 17–18.

B. *Delgadillo's Layoff*

Nidio Delgadillo, who was born in the Dominican Republic, began working for the Respondent in 1978. He normally worked a 12-hour shift in the dyeing department.

[1] The Respondent has asserted that Sec. 10(b) of the Act bars the General Counsel from now asserting that its employee, Nidio Delgadillo, had been discharged in violation of Sec. 8(a)(4) of the Act. The complaint in Case 29–CA–15346 alleged that he was discharged in October 1990, in violation of Sec. 8(a)(1) and (3) of the Act; the complaint in Case 29–CA–15333 alleged that he had been laid off in July 1990 in violation of Sec. 8(a)(1), (3), and (4) of the Act. Both of those complaints were amended at the hearing to add to each the allegation that Delgadillo was discharged in October 1990 in violation of Sec. 8(a)(4). I find no merit to the Respondent's contention that Sec. 10(b) bars the amended allegation. As the General Counsel asserted, the same evidence adduced with respect to the original allegation was offered to support the amended allegation. Further, the amendment added the allegation that Delgadillo's discharge was motivated by the same unlawful consideration as that underlying his earlier layoff, previously alleged as violative, inter alia, of Sec. 8(a)(4) of the Act. Thus, the amendment is closely related to the original allegations and is litigable. *See Columbia Textile Services*, 293 NLRB 1034 (1989). See also *Pergament United Auto Sales*, 296 NLRB 333 (1989).

[2] On February 13, 1992, the General Counsel filed a motion to reopen the record for the purpose of receiving in evidence a copy of the Supplemental Decision in Case 29–RC–7491 in which the Regional Director upheld an ILGWU objection based on the Respondent's noncompliance with the *Excelsior* list requirement. The Regional Director set aside the results of the election therein, held on November 20, 1990. I shall take administrative notice thereof, notwithstanding the Respondent's opposition but will not attribute union animus thereby to the Respondent, as urged in the General Counsel's brief. I thus receive in evidence a copy of the Supplemental Decision, solely for background purposes. The General Counsel's motion and the Respondent's letter dated February 19 in opposition are hereby designated as ALJ Exhs. 2A and B respectively, received in evidence.

In 1987, he served on a committee for Local 17–18 which negotiated a collective-bargaining agreement with the Respondent for the years 1987–1990.

In late 1989 or early 1990, Delgadillo called the ILGWU office after having heard one of the ILGWU's radio commercials. He met thereafter with ILGWU representatives on several occasions. On April 24 and 25, 1990, he and several coworkers circulated a petition which stated that the employees of the Respondent wished to be represented by the ILGWU, and not by Local 17–18. Fifty-three employees signed that petition on those 2 days. On April 26, 1990, Delgadillo handed that signed petition, together with a covering letter, to Moishe Rubashkin, the son of Aaron Rubashkin, the owner of the Respondent. This letter stated that the employees did not want the Respondent to negotiate with Local 17–18 but wanted the ILGWU to represent them.[3]

In June and July 1990, many of the Respondent's employees were laid off. Delgadillo transferred in July to the night shift to replace a less senior employee who was laid off. Delgadillo's working hours were reduced as a result of the slowdown in business; he was working only about 2 to 4 shifts a week.

On July 10, 1990, pursuant to petitions filed by the ILGWU, a hearing in Cases 29–RC–7231, 29–RC–7560, and 29–RC–7621 had been scheduled. Those petitions involved the Respondent's employees. Delgadillo was present in the hearing room on July 10 for those cases. He was with the ILGWU's representatives. Aaron Rubashkin was there for the Respondent. Delgadillo did not testify that day in those representation cases.

At the hearing before me, Delgadillo testified as follows concerning the events after July 10. On the next day, July 11, Moishe Rubashkin told him that he was laid off. Delgadillo asked to stay on until the end of the week. His request was approved. On Monday, July 16, Moishe Rubashkin told him that there was no more work for him. He left and returned to the factory on July 17 to talk with his supervisor, Mohammed Afzal. Afzal asked him for the telephone number of Jose Casco, one of the employees who had been laid off several weeks previously. Delgadillo gave Afzal the telephone number for Casco, who was then recalled to work in Delgadillo's place, even though Delgadillo had more seniority.

Delgadillo filed a grievance with Local 17–18 to protest his layoff; Local 17–18 wrote the Respondent on July 20 to notify it of the grievance.

Delgadillo testified further as follows. On July 27, he testified for the ILGWU at a hearing held in the representation cases noted above. He also went to the factory that day to pick up his paycheck. He asked Rosemary Rich, an office employee ''for a piece of paper for unemployment,'' i.e., for something in writing that he could use in conjunction with his claim for unemployment compensation benefits. Rich gave him two pieces of paper, stapled together. He signed one of them at her request. Both papers were on the Respondent's letterhead; were dated July 27 and the addressee on both was ''To whom it may concern.'' Both were signed by the Respondent's controller. Delgadillo testified that he cannot read English and did not know what was written on those papers. The contents of the two seemingly identical letters were in fact different. One read:

> THIS IS TO STATE THAT NIDIO DELGADILLO, HAS BEEN LAID OFF DUE TO LACK OF WORK.
>
> FOR ANY INQUIRIES, PLEASE FEEL FREE TO CONTACT US.

The second letter read:

> THIS IS TO CERTIFY THAT MR. NIDIO DELGADILLO, HAS AGREED TO BE LAYED OFF DUE TO LACK OF WORK.
>
> FOR ANY INQUIRIES, PLEASE FEEL FREE TO CONTACT US.

Delgadillo's signature is on the second letter.

As noted earlier, the Respondent asserts that Delgadillo had requested to be laid off. It called three witnesses, namely, Rosemary Rich, Mohammed Afzal, and Javid Iqbal,[4] in support thereof.

Rosemary Rich testified in substance that on July 27 she prepared, at Moishe Rubashkin's direction, the two letters described above and that Delgadillo signed one of them to acknowledge that his layoff was voluntary. She testified that she told him then not to show the signed letter to anyone at the unemployment office; the statement therein that his layoff was voluntary obviously would defeat his application for benefits. I am disinclined to credit her testimony. It was adduced in good part by leading questions. Further, it is highly unlikely that Delgadillo would have, on July 27, acknowledged that he had asked to be laid off, as her account has it, in light of the fact that he had, over a week previously, filed a grievance protesting his layoff out of seniority. Second, there is no evidence that anyone translated the letters to Delgadillo; as discussed later in this decision, Moishe Rubashkin used an interpreter when he talked at length with Delgadillo. Third, it is highly unlikely that Delgadillo would surrender 12 years of seniority solely because of a temporary slowdown when, in earlier slowdowns, he never was laid off. It is even more unlikely that he would have asked to leave the Respondent's employ at the very peak of the ILGWU's organizational effort, which he, himself, initiated and led. The Respondent's brief asserts, in effect, that Delgadillo and ILGWU engaged in a coercive effort to entrap the Respond-

[3] Local 17–18 and the Respondent signed a collective-bargaining agreement, effective May 1, 1990, to April 30, 1993. The signature page recites that that agreement was signed on April 24, 1990.

[4] Moishe Rubashkin did not testify as I had precluded the Respondent from calling him as a witness under the following circumstances. He had been subpoened by the General Counsel to testify pursuant to Rule 611(c) of the Federal Rules of Evidence. He refused to honor the subpoena. The General Counsel's motion to preclude him from testifying later was granted. See *Bannon Mills*, 146 NLRB 611, 633–634 (1964). One of the matters on which the General Counsel sought to examine Moishe Rubashkin was raised by the General Counsel's motion to amend the complaint to allege that the Respondent, by Moishe Rubashkin, violated Section 8(a)(1) by having offered a bribe to Delgadillo to induce him not to testify in this case. The Respondent's petition to quash the subpoena served on Moishe Rubashkin was denied. The Respondent and Rubashkin's personal counsel then sought and were granted adjournments to consider whether to petition for a protective order, under Sec. 102.31(c) of the Board's Rules, against self-incrimination. When no such relief was sought and the subpoena was not honored, the General Counsel's motion to preclude him from testifying later was granted.

ent to make it appear that Respondent committed a discriminatory act. That is an implausible conjecture.

The second witness called by the Respondent to support its claim that Delgadillo's layoff was voluntary was Mohammed Afzal, a leadman who testified that he has the power to summarily discharge employees under him. Afzal testified that Delgadillo asked him to find out from Moishe Rubashkin if it was all right for him to be laid off in order to be able to earn more money as a car service driver. Afzal testified that Rubashkin granted the request and that he, Afzal, informed Delgadillo that it was all right for him to be laid off. During cross-examination, Afzal acknowledged that, in fact, he told Delgadillo later that his troubles with the Respondent may be due to his support for the ILGWU. The third witness, Iqbal, is a quality control employee who testified that, in July 1990, Delgadillo mentioned to him that he would like to be laid off so that he could work as a car service driver. I find unpersuasive Afzal's and Iqbal's accounts, insofar as they indicate that Delgadillo wanted to be laid off.

The credited evidence establishes that Delgadillo was the leading advocate for the ILGWU, that the Respondent was aware of this, that it also was aware that he had appeared at the Region 29 office in furtherance of the representation case petitions filed by the ILGWU, that he was laid off at the same time, that his layoff was out of seniority, and that there was independent evidence of the Respondent's animus towards him for his support of the ILGWU effort. I thus find that the Respondent laid him off to discourage support for the ILGWU among its employees and also because he had presented himself at the Board's Regional Office in conjunction with the ILGWU's representation case petitions.[5]

C. *Delgadillo's Recall and His Discharge*

On October 10, 1990, the initial complaint in these cases was issued; it alleged Delgadillo's layoff, discussed above, as violative of Section 8(a)(1), (3), and (4) of the Act. On October 17, 1990, the Respondent sent Delgadillo a letter, written in English, which stated that work was available and which also stated that, if the Respondent did not hear from him within 5 days after he received the letter, the Respondent would assume that he was not interested in returning to work. Delgadillo went to the Respondent's plant the next day, October 18. His account, as to what transpired then, is set out in the next paragraph.

A new man in the office told him to report for work on Monday, October 22. Delgadillo asked his supervisor, Mohammed Afzal, to make a notation of that date on the October 17 letter. Delgadillo, in effect, wanted proof that he had come back within 5 days. Afzal did not make that notation on the letter which was in Delgadillo's possession, but jotted a notation to that effect on the back of the copy he had. Afzal told him that he was not sure if there would be work on Sunday, October 21, but that he should come in then in case there was work. The normal workweek started on a Sunday.

Delgadillo's testimony as to the events of October 21 and 22 follows.

He reported to Afzal on Sunday and worked his 12-hour shift, as he had done prior to his layoff. On the next day, he reported for work and had been working at his machine for a short time when Afzal told him to go home. He asked Afzal for a reason. Afzal told him he did not know the reason and told him to see Moishe Rubashkin. Delgadillo went to the office and asked Moishe Rubashkin if he had told Afzal to send him home. Rubashkin replied that he did. Delgadillo asked for a letter to that effect. Rubashkin told him that he ''didn't need it . . . because [Delgadillo] had papers in the court.''

Delgadillo further testified that he saw Afzal a year later, in October 1991 and asked why he was not called back as ''there was a lot of work.'' According to Delgadillo, Afzal replied that he did not know why, that he had no problem with Delgadillo but that ''maybe [it was] because of the union.''

Afzal testified as follows for the Respondent concerning Delgadillo's recall. He had directed Delgadillo to return to work on Monday, October 22. Delgadillo came in to work a day early, on Sunday, and told Afzal that he had been told by Moishe Rubashkin to report then. Delgadillo began working on October 21 but began to ''fool around,'' and that ''this [fooling around] happened all day.'' He warned Delgadillo three times for being away from his work station. About 10 a.m. on the next day, Moishe Rubashkin came to the facility. Afzal told Rubashkin then that Delgadillo had come back on Sunday and had been leaving his work station. Rubashkin instructed him to tell Delgadillo that he was to go home, that he was in effect discharged.

Afzal further testified that, in prior years, he had, in effect, warned Delgadillo 60 or 70 times about his talking while on the job and that, when he had reported those incidents to Moishe Rubashkin, Rubashkin had instructed him many times to send Delgadillo home, if he does not comply with the warnings.

Afzal also testified that, in October 1991, he told Delgadillo that he, Delgadillo, had a problem with Moishe Rubashkin because of the Union.

Delgadillo denied that on Sunday, October 21, he wandered from his work station to talk with other employees.

I credit Delgadillo's account. Afzal's account is improbable. It is unlikely that Afzal had no idea on Sunday, October 21, that Delgadillo would be reporting for work or that he, Afzal, simply accepted Delgadillo's statement that day that Moishe Rubashkin had authorized Delgadillo to start that day. Further, Afzal's testimony, suggesting that Delgadillo's wandering away from his work station repeatedly on October 21 was a factor in his being discharged, has to be discounted in light of Afzal's other testimony that Delgadillo had previously engaged in similar wanderings on about 70 occasions, apparently without incident, and also in light of Afzal's testimony that Delgadillo's support for the Union may have been a source of Delgadillo's problems with Moishe Rubashkin.

The credited evidence establishes that Delgadillo's discharge on October 22 was a continuation of the same discrimination meted out to him by the Respondent in July

[5] The Respondent had urged that I defer to an arbitrator's findings, in an award deciding Local 17–18's handling of Delgadillo's grievance; there, the arbitrator found that Delgadillo asked to be laid off. I rejected that contention based on the Board's holding in *Postal Service*, 282 NLRB 686, 693–694 (1987). Further, I examined the award in light of the separate contention of the Respondent that the arbitrator's credibility resolutions be followed. I decline to do so in view of the totality of the evidence before me.

1991 when he was laid off. There was no reason offered by the Respondent to delay his being put back to work immediately upon his getting the recall letter of October 17. The independent evidence of animus, noted above, further confirms the discriminatory basis for his discharge as does Moishe Rubashkin's statement, on October 21, to Delgadillo that he did not need to be given a reason for his layoff as he had ''papers in court,'' apparently a reference to the unfair labor practice charge in this case.

I therefore find that Delgadillo was discharged because of his support for the Union and because an unfair labor practice charge had been filed against Respondent to protest his layoff and because of his having given testimony under the Act.

D. *The Discharge of Wilson Montufar and Alleged Coercive Acts*

The complaint in Case 29–CA–15399 alleges that the Respondent discharged its employee, Wilson Montufar, on about November 26, 1990, in order to discourage support for the ILGWU. It further alleges that the Respondent, by alleged Supervisors Steven Crook and Arnold Bruckner, in October and November 1991, threatened employees with layoffs, discharge and other reprisals if they selected the ILGWU as their collective-bargaining representative and that Crook also promised them job security and offered them benefits if they rejected the ILGWU. The Respondent contends that Montufar was discharged solely because of his work performance and it denies that it engaged in any coercive conduct.

Montufar started working for the Respondent in April 1990. He was a back tender on a print machine, a job which required him to examine fabrics, processed in that machine, for defects. He worked 6 days on a 12-hour shift, 7 a.m. to 7 p.m. under Day-Shift Supervisor Steven Crook. On occasions when Crook arrived late, the night-shift supervisor, Joseph Roy, was responsible for Montufar's work.

Montufar testified in essence that the plant manager, Arnold Bruckner, saw him reading an ILGWU leaflet about a month before he was discharged and told him then that if Moishe Rubashkin sees him reading that leaflet, Rubashkin will fire him. Montufar testified that Bruckner has an office on the floor above the production floor and that he hired several Polish employees, one of whom he assigned to the machine on which Montufar worked.

On November 19, 1990, Montufar attended a meeting held by the Respondent concerning the election scheduled for the following day, November 20, in Case 29–RC–7491. He testified that, at that meeting, his supervisor, Crook, spoke, using an interpreter, to inform the employees that there would be less work for them and layoffs if they voted for the ILGWU. As noted at footnote 2, the ILGWU filed objections to the election.

Montufar testified as follows concerning his discharge. About a week after the election, the plant manager, Arnold Bruckner, informed him that his name was on a list of employees who were being laid off and that he, Bruckner, was just following orders in laying him off. Montufar left the plant and waited outside for his supervisor, Crook, to arrive. When Crook did arrive, he asked Montufar why he was not at work. He told Crook that Bruckner told him to leave. Crook told him to wait while he investigated the matter. Crook returned a half-hour later. He told Montufar that he did not know what was happening and advised Montufar to come back in a week. Montufar returned the next week. Crook told him then that there was no work for him and that Moishe Rubashkin did not want to see him in the factory.

Night-shift supervisor, Joseph Roy, testified for the Respondent in response to Montufar's account. Neither Bruckner nor Crook testified. Crook, as of the date of the hearing, was no longer in the Respondent's employ.

Roy's testified as follows. He had warned Montufar several times about leaving his assigned work area. Also, Montufar had failed to detect printing errors and those errors resulted in shipments of merchandise being returned due to printing defects. Further, on one occasion, Montufar's timecard had been punched in even though he was not at work. When Montufar did arrive for work, Roy warned him that, if that happened again, he would be fired. On Sunday, November 25, 1990, Montufar's timecard had been punched in, although he was not at work. Roy informed Crook on the following day that he had ''caught Montufar again.'' Crook instructed him, Roy, to tell Montufar that he was fired. On Tuesday morning, November 27, Roy told Montufar that he was discharged because someone else had punched in his timecard for him.

In rebuttal, Montufar denied ever having been warned as to any aspect of his work. Rather, he testified that Crook had praised his work.

I credit Montufar's account. Roy's testimony offered shifting reasons for Montufar's discharge until it focused on the matter of his timecard. That testimony lacks credibility. The Respondent apparently conducted no inquiry to find out the identity of the individual who purportedly punched in Montufar's card for him.

The credited evidence establishes that Montufar supported the ILGWU, that Plant Manager Bruckner warned him against reading ILGWU literature, that Day-Shift Supervisor Crook threatened employees if they supported the ILGWU, that Montufar's layoff came as a surprise to his own supervisor, and that the reason proferred by the Respondent for his discharge is pretextual. I find that Montufar's support of the ILGWU was the reason for his discharge and that the Respondent offered no evidence that, notwithstanding Montufar's protected activities, it would still have discharged him.[6]

The credited evidence also established that the Respondent, by the warning given by Bruckner and the threats and promises by Crook, coerced employees as to their rights under Section 7 of the Act.

E. *The Alleged Bribe Offer to Delgadillo*

The General Counsel alleges that, on one day during the course of the hearing in this case, the Respondent, by Moishe Rubashkin, sought to bribe Delgadillo not to testify in this case. The alleged bribe has been referred to in footnote 4 of this decision.

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[6] Roy's testimony that Montufar failed to detect errors resulting in merchandise returns was not supported by any documentation. Further, as discussed elsewhere in this decision, the Respondent has a quality control inspector, Iqbal, who apparently has not been held accountable for any printing errors.

Delgadillo testified that Moishe Rubashkin had on an earlier occasion sought to bribe him and that, when he was advised on October 3, 1991, by a coworker, Benjamin Green, that Moishe Rubashkin wanted to talk to him, he used a tape recorder to secretly record the discussion. Delgadillo's testimony, as corroborated by the transcripts of the tape recording, discloses that Green, who had brought Delgadillo with a taxi to the Respondent's premises on October 8 to meet with Moishe Rubashkin, asked Rubashkin to reimburse him for the taxi's fare and that Rubashkin told Green to stay so that Green could serve as interpreter for him and Delgadillo. (At that time, Delgadillo was scheduled to testify for the General Counsel in this case.) Rubashkin told Delgadillo that he would give him money to go to Atlantic City. When Delgadillo said he had no reason to go there, Rubashkin offered to buy him a ticket to go to Santo Domingo to see his son and that he expected that Delgadillo would then not present himself in court. When Delgadillo again indicated a reluctance to accept, Rubashkin offered to buy tickets for him and his wife and to give him enough money for them to stay in Santo Domingo for 2 weeks. Delgadillo told him that he intended to appear as a witness in this case the next day. Rubashkin assured him that if he left for Santo Domingo and returned in 2 weeks, he would get his job back. The meeting ended when Delgadillo said, in effect, he would think about the offer.

The evidence clearly supports the complaint allegation that the Respondent, by Moishe Rubashkin, had unlawfully sought to induce Delgadillo to refrain from testifying against the Respondent in this case.

CONCLUSIONS OF LAW

1. The Respondent is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. The ILGWU is a labor organization as defined in Section 2(5) of the Act.

3. The Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act by having:

(a) Promised benefits to employees and threatened them with less work, layoffs, and discharge in order to discourage them from supporting the ILGWU.

(b) Offered a bribe to an employee to induce him not to testify against the Respondent in this case.

(c) Engaged in the conduct described below in paragraphs 4 and 5.

4. The Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(3) of the Act by having:

(a) Laid off Nidio Delgadillo in July 1990 because he supported the ILGWU.

(b) Discharged Nidio Delgadillo and Wilson Montufar in order to discourage support among its employees for the ILGWU.

5. The Respondent engaged in unfair labor practices within the meaning of Section 8(a)(4) of the Act by having laid off and later discharged Nidio Delgadillo because he presented himself at a Board hearing to testify in support of representation case petitions filed by the ILGWU, later testified in a Board proceeding and was named in an unfair labor practice charge.

6. The unfair labor practices described in paragraphs 3, 4, and 5 affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find it necessary to order the Respondent to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily laid off and later discharged Nidio Delgadillo and also having discriminatorily discharged Wilson Montufar, it shall be ordered to offer them full reinstatement, with backpay computed as prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), for losses suffered as a result of the discriminatory treatment given them.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[7]

ORDER

The Respondent, Cherry Hill Textiles, Inc., Brooklyn, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Offering a bribe to any employee as an inducement not to testify against the Respondent in a Board proceeding.

(b) Laying off or discharging any employee in order to discourage employees from joining or supporting the International Ladies' Garment Workers' Union, AFL–CIO (ILGWU).

(c) Promising benefits to employees, or threatening them with less work, layoffs, or discharges in order to discourage support for the ILGWU.

(d) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Nidio Delgadillo and Wilson Montufar immediate and full reinstatement to their former jobs or, if they no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for their lost earnings, with interest, in the manner set forth in the remedy.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its facility in Brooklyn, New York, copies of the attached notice marked ''Appendix.''[8] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately

[7] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[8] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.